



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/172468

PRELIMINARY RECITALS

Pursuant to a petition filed March 04, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Aging & Disability Resource Center of Dane County- in regard to Medical Assistance (MA), a hearing was held on April 12, 2016, at Madison, Wisconsin.

The issue for determination is whether the county agency correctly denied the petitioner's May 2015 application for MA-related Home and Community Based Waiver (Waiver) services, due to failure to fit within the nursing home level of care.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Aging & Disability Resource Center of Dane County-
2865 N Sherman AV
Madison, WI 53704-3016

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.

2. Petitioner was found ineligible for the CIP/COP waiver programs on the basis that he does not meet the required level of care.
3. Petitioner's results on the long term care functional screen administered on 1/14/16 indicate that he cannot safely perform ADL's of bathing and mobility, and the following IADL's meal preparation and laundry/chores.
4. Despite these findings, when the ADRC entered the information into the DHS computer, the result was a finding of no eligibility due to not meeting the nursing home level of care.
5. Petitioner appealed.

DISCUSSION

The MA Community Waiver Programs (e.g., Community Integration Program, Community Options Program - Waiver) are partially funded by the federal government through the Medical Assistance (MA) program. These Waiver programs must meet federal requirements, including MA regulations when applicable. To receive services through the Waiver programs, a person must be currently eligible for MA, fit within an elderly or disabled target group, and have institutional-level care needs. Medicaid Eligibility Handbook (MEH), §28.1, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm> and the MA HCB Waivers Manual (Manual), at <https://www.dhs.wisconsin.gov/waivermanual/index.htm>. The burden of proving eligibility rests with the member.

To meet the functional eligibility requirement (i.e., to have institutional-level care needs), a person must require some sort of in-home care or therapy that reaches a level of nursing facility care. Manual, §2.07; 42 C.F.R. §§ 435.217 & 435.441.301(b). To be found or remain eligible, the applicant must undergo an assessment of his/her needs and functioning.

The Wisconsin Department of Health Services made efforts to improve the statewide efficacy of functional assessments by designing and implementing a computerized functional assessment screening system. This system relies upon a face-to-face interview with a trained quality assurance screener. The screener met with the petitioner as part of the reassessment process. In this case, the petitioner and screener agree as to the screener's findings of the petitioner's diagnoses and ADL and IADL needs. Current policy requires the Department's local agent/screener to then enter this data into the Department's functional screen computer program. See <http://dhs.wisconsin.gov/LTCare/FunctionalScreen/Index.htm>. The Level of Care (LOC) Functional Screen form and program reiterate the skeletal definitions from the federal Medicaid rules for Intermediate Nursing Care and institutional Developmental Disability facilities. When the petitioner's functional ability scores were entered into the DHS algorithm, the result was a DHS conclusion that the petitioner does not have care needs at the nursing home level. Thus, the petitioner was found to be ineligible going forward, consistent with the DHS-directed result.

However, the computer program infrequently yields a result that is not consistent with state code. Wis. Admin. Code § DHS 10.33(2)(c) describes comprehensive (a/k/a nursing home) functional capacity:

(2) DETERMINATION OF FUNCTIONAL ELIGIBILITY.

(a) *Determination.* Functional eligibility for the family care benefit shall be determined pursuant to s. 46.286 (1), Stats., and this chapter, ...

(c) *Comprehensive functional capacity level.* A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.
- 2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.**
3. The person cannot safely or appropriately perform 5 or more IADLs.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.
6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:
 - a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.
 - b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self-neglect or resistance to needed care.

As evidenced by the 71/14/16 screen (see ex. #2), the petitioner cannot safely/appropriately perform two ADL's (bathing and mobility), and two IADL (meal preparation and laundry and/or chores). Thus, per code, he meets the comprehensive/nursing home level of care per subsection (c)2 above. Therefore, although the screening personnel followed their DHS instructions correctly, the discontinuance of the petitioner's Iris eligibility due to failure to meet the level of care requirement was incorrect. This decision is in accord with prior decisions FCP-11/113325 (Wis. Div. of Hearings & Appeals October 26, 2010, ALJ Schneider)(DHS), FCP-44/115906 (Wis. Div. of Hearings & Appeals April 5, 2011, ALJ Schneider)(DHS), and Rehearing FCP/130316 (Wis. Div. of Hearings & Appeals September 29, 2011, ALJ O'Brien)(DHS).

CONCLUSIONS OF LAW

The Department determination regarding level of care is inconsistent with the Administrative Code criteria and petitioner meet at the nursing home level of care for purposes of waiver eligibility.

THEREFORE, it is

ORDERED

That the petition be remanded to the agency with instructions to find that the petitioner meets the nursing home level of care and waiver eligibility from the application date or termination date forward, in accord with the Conclusion of Law above, if he is otherwise eligible for the program. This action shall be taken within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, **M**Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

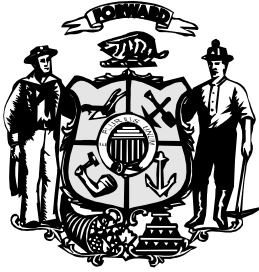
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 16th day of May, 2016

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 16, 2016.

Aging & Disability Resource Center of Dane County-ARC
Bureau of Long-Term Support
[REDACTED]